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13 Virtuoso SICAV-SIF in Respect of the Sub-

14 Fund Credit Suisse (Lux) Supply Chain

Finance Fund

15  
16 **UNITED STATES DISTRICT COURT**

17 **NORTHERN DISTRICT OF CALIFORNIA**

18  
19 In re Ex Parte Application of Credit Suisse  
20 Virtuoso SICAV-SIF in Respect of the Sub-  
21 Fund Credit Suisse (Lux) Supply Chain  
Finance Fund,

22 Petitioner.

Case No.:

**DECLARATION OF NEIL ANTHONY  
GOLDING IN SUPPORT OF EX PARTE  
APPLICATION FOR DISCOVERY  
ORDER PURSUANT TO 28 U.S.C. § 1782**

1 I, Neil Anthony Golding, declare as follows:

2 1. I am a partner at Freshfields Bruckhaus Deringer LLP (“Freshfields”). I have  
3 personal knowledge of the facts stated below except for those facts stated on information and belief  
4 and as to those facts I am informed and believe those facts are true.

5 2. I have been retained by Credit Suisse Virtuoso SICAV-SIF in respect of the sub-fund  
6 Credit Suisse (Lux) Supply Chain Finance Fund (“Petitioner”) in connection with a court proceeding  
7 the Petitioner is planning to initiate in the High Court of Justice of England and Wales (the “English  
8 Lawsuit”). Specifically, the English Lawsuit is intended to include a claim against a number of  
9 entities in the SoftBank group (as set out below), under section 423 of the Insolvency Act 1986 (the  
10 “Section 423 Claim”). Further details with respect to the English Lawsuit are given below.

11 3. I make this declaration in support of an application by the Petitioner for discovery  
12 from SB Investment Advisers (US) Inc., (“SBIA (US)”) pursuant to 28 U.S.C. § 1782 (the “1782  
13 Application” or the “Application”).

14 4. This declaration comprises the following sections:

- 15 a. professional background;
- 16 b. background facts;
- 17 c. steps taken to date;
- 18 d. the English Lawsuit;
- 19 e. discovery sought; and
- 20 f. conclusion.

21 5. As a preliminary point, I use the following definitions in this declaration:

- 22 a. SoftBank Group Corp (“SBG”);
- 23 b. SoftBank Vision Fund LP (“Vision Fund”);
- 24 c. SoftBank Vision Fund II-2 LP (“Vision Fund II”);
- 25 d. SVF Abode (Cayman) Limited (“SVF Abode”);
- 26 e. SVF II Abode (Cayman) Limited (“SVF II Abode”);
- 27 f. SVF Habitat (Cayman) Limited (“SVF Habitat”); and
- 28 g. SB Investment Advisers (UK) Limited (“SBIA (UK)”).

1 **Professional Background**

2           6.       I am a solicitor qualified in England and Wales. I qualified as a solicitor in 1992. I  
3 have been a partner at Freshfields since May 1, 2000. Since qualifying as a solicitor, I have practised  
4 in the Dispute Resolution department of Freshfields' London office and have extensive experience  
5 representing clients in litigation brought in the High Court of Justice in London. I am therefore very  
6 familiar with the rules and procedures governing High Court litigation and I believe that, due to my  
7 legal experience and practice, I am in a position to make the present declaration.

8 **Background to the English Lawsuit**

9           7.       This section of my declaration sets forth background facts the Petitioner plans to  
10 allege in the English Lawsuit or that are otherwise relevant to this proceeding, all of which I am  
11 informed and believe are true after reasonable investigation.

12           8.       Credit Suisse Virtuoso SICAV-SIF ("Virtuoso") is an "umbrella fund" incorporated  
13 under the laws of Luxembourg for the purpose of investing in various securities and other  
14 investments through multiple sub-funds with varying investment approaches and objectives.

15           9.       One of Virtuoso's sub-funds, named the Credit Suisse (Lux) Supply Chain Finance  
16 Fund (the "SCF Subfund"), which Virtuoso acts in respect of, was designed to primarily invest in  
17 notes connected to so-called supply chain finance programs, including programs organized by  
18 Greensill Capital Pty Limited and its subsidiaries, including Greensill Ltd and Greensill UK (as  
19 defined below) (collectively known as "Greensill").

20           10.      In a supply chain finance program, a funder—here, Greensill—extends financing (i)  
21 to a purchaser buying supplies or other goods from a third party and/or (ii) to a seller selling supplies  
22 or other goods to a third party to cover the period between the time the seller invoices for the goods  
23 and the time the third party pays the seller for the goods. In the latter scenario, Greensill would fund  
24 the sellers by purchasing the sellers' accounts receivable.

25           11.      In other words, at the time or shortly prior to the time when the seller of the goods  
26 delivered them to the ultimate buyer, Greensill would pay the seller—an accounts-receivable seller,  
27 or "AR Seller"—a discounted amount calculated by reference to the amount that the AR Seller  
28 would be entitled (or expected to be entitled) to be paid. The AR Seller would simultaneously assign

1 its right to receive payment for the goods to Greensill such that, when the ultimate buyer of the  
2 goods paid for them, that money would go to Greensill, not the AR Seller.

3 12. The AR Sellers would benefit from this program because they would receive cash  
4 from Greensill as soon as, or in some cases before, the AR Sellers delivered the goods to each buyer,  
5 as opposed to having to wait for a period of weeks or months to receive that cash from each buyer.  
6 Greensill would benefit from this program because it would collect a premium each time it  
7 purchased accounts receivable from an AR Seller, as well as, in at least some cases, additional fees  
8 and/or interest payments.

9 13. Beginning in or about 2019, the SCF Subfund purchased notes (the “Notes”) backed  
10 by participations in respect of accounts receivable of such AR Sellers, being companies in the  
11 Katterra group which is a group of construction companies (the “Katterra Group” or “Katterra”). The  
12 Katterra Group comprises companies owned by or affiliated with Katterra Inc., a company  
13 incorporated in the Cayman Islands (“Katterra Cayman”), including its subsidiary Katterra Inc., a  
14 Delaware corporation which was headquartered in California until sometime in 2021 (“Katterra  
15 Delaware”).

16 14. With regard to the Katterra Group specifically, a Greensill entity called Greensill  
17 Limited (“Greensill Ltd”) would purchase accounts receivable from a Katterra Group company that  
18 represented amounts which that company expected (or anticipated that it would be able) to collect  
19 from its customers, as set forth in a Receivables Purchase Agreement between Katterra Delaware,  
20 Greensill Ltd, and various other Katterra Group entities dated December 9, 2019 (the “Katterra  
21 RPA”). In various circumstances, Greensill Ltd could also require the relevant Katterra Group  
22 company to repurchase a purchased accounts receivable, including where the receivable was not  
23 paid by the Expected Payment Date (as defined in the Katterra RPA).

24 15. Greensill Ltd then granted participations, which were contractual rights to receive  
25 equivalent amounts to the payment obligations under the Katterra RPA to its parent company  
26 Greensill Capital (UK) Limited (“Greensill UK”), which in turn assigned its rights to those  
27 participations to a special-purpose vehicle called Hoffman S.A.R.L. (“Hoffman”) to securitize the  
28 rights under its supply chain finance programs into notes. The Notes backed by Katterra Group

1 receivables were issued through Hoffman’s Compartment MZ.

2       16.     The SCF Subfund acquired the economic interest in the Notes. As such, the  
3 Petitioner was the ultimate funding source for Greensill to purchase the Katerra Group’s accounts  
4 receivable (apart from a small quantity of Notes earlier in the programme, which were acquired by  
5 another similar fund). By early 2020, Greensill Ltd had purchased outstanding receivables from  
6 Katerra Group with a value sufficient to support approximately \$440 million in issued Notes, and  
7 the Petitioner had purchased a mirroring total of approximately \$440 million worth of Notes backed  
8 by those Katerra Group receivables. In other words, when the Notes came due, the Petitioner  
9 expected to be paid back at least \$440 million ultimately funded by the collection of payments tied  
10 to accounts receivable of Katerra Group companies.

11       17.     During 2020, Notes which fell due were redeemed and replaced with similar Notes  
12 for equivalent value that would come due at some later date. By late 2020, in particular as a result  
13 of transactions on or about December 22, 2020 to extend Note maturities, most of the outstanding  
14 Notes had maturity dates of March 15, 2021, with some Notes bearing maturity dates of May 17,  
15 2021.

16       18.     The Katerra Group was in the midst of severe financial distress by late 2020, despite  
17 having been heavily invested in over the preceding approximately two years by one or more funds  
18 affiliated with SBG (and collectively with its subsidiaries and affiliates, “SoftBank”). Specifically,  
19 according to public sources, it appears that SoftBank invested over a billion dollars into the Katerra  
20 Group through various transactions that occurred in or about 2018 and 2019. *See, e.g.*, Declaration  
21 of Matthew R. Niemann in Support of (A) DIP Financing and (B) All First Day Relief, *In re Katerra*  
22 *Inc.*, Case No. 21-31861 (Bankr. E.D. Tex.) (the “Katerra Bankruptcy”), Dkt. No. 39 (hereinafter  
23 the “Niemann Decl.”) ¶ 19 (“In 2018 and 2019, Katerra initiated four different rounds of financing  
24 and raised a total of approximately \$2.4 billion. During Katerra’s Series D-1 & D-2 financing and  
25 Series E financing, SoftBank Vision Fund I (“SVF”) contributed approximately \$1.4 billion of  
26 financing and subsequently became Katerra’s largest capital investor (though SVF did not hold a  
27 controlling stake in Katerra).”).

28       19.     Public sources also indicate that SoftBank was a major investor in Greensill in or

1 about this same time period. *See, e.g., id.* ¶ 20 (“SVF and/or its affiliates owned approximately 40%  
2 of Greensill at the time of the 2020 [Katerra] recapitalization transaction described herein.”).

3         20. According to SBG’s 2021 Annual Report and other public sources, these investments  
4 were made by Vision Fund and/or Vision Fund II (collectively, the “Vision Funds”), SoftBank’s  
5 private-investment arm. *See, e.g.,* SoftBank Group 2021 Annual Report, [https://group.softbank](https://group.softbank/system/files/pdf/ir/financials/annual_reports/annual-report_fy2021_01_en.pdf)  
6 [/system/files/pdf/ir/financials/annual\\_reports/annual-report\\_fy2021\\_01\\_en.pdf](https://group.softbank/system/files/pdf/ir/financials/annual_reports/annual-report_fy2021_01_en.pdf) (hereinafter  
7 “SoftBank 2021 Annual Report”) at 022. Vision Fund and Vision Fund II are Jersey limited  
8 partnerships. So far as the Petitioner is aware, they carry out their investments through a range of  
9 investment vehicles incorporated in various jurisdictions.

10         21. The Vision Funds’ website lists three individuals as the Vision Funds’ “Leadership”:  
11 Masayoshi Son, the “Representative Director, Corporate Officer, Chairman & CEO” of SBG;  
12 Rajeev Misra, the “CEO, SoftBank Investment Advisers” and “Executive Vice President” at SBG;  
13 and Ron Fisher, “Director & Chairman” of SBIA US. <https://visionfund.com/team>.

14         22. Public sources indicate that Mr. Son is the ultimate decision-maker for the Vision  
15 Funds. In the “Message from Our CEO” portion of the SoftBank 2021 Annual Report, Mr. Son  
16 describes decision-making for the Vision Funds in the first person, writing that “I have been  
17 focusing on [the Vision Funds] the most” and that “[c]ritics commented that my insight was not as  
18 good as before or that I had become too greedy” when the Vision Funds’ “results fell short of  
19 expectations[.]” SoftBank 2021 Annual Report at 005.

20         23. Press reports also confirm this. For example, in an August 8, 2021 article, the  
21 Financial Times reported: “People close to [SoftBank] also say that it is difficult to challenge a  
22 decision that Son has already made at the Vision Fund level even if the deals are reviewed by [SBG].  
23 ‘If Masa has already said yes, who am I to object?’ said one of the people.” Kana Inagaki and Leo  
24 Lewis, *Softbank deals unleash internal compliance tensions: ‘If Masa said yes, who am I to object?’*,  
25 Financial Times, Aug. 8 2021, [https://www.ft.com/content/107fe840-1874-4fb2-a70b-](https://www.ft.com/content/107fe840-1874-4fb2-a70b-f2f8f1381215)  
26 [f2f8f1381215](https://www.ft.com/content/107fe840-1874-4fb2-a70b-f2f8f1381215).

27         24. Similarly, in an October 3, 2021 article, Bloomberg reported that “[s]everal senior  
28 people who departed [SoftBank Investment Advisers] grew frustrated with Son’s overriding

1 influence, which left them with little real authority[.]” Pavel Alpeyev, *SoftBank Is Cutting More*  
2 *Deals With Fewer Staff Than Ever*, Bloomberg, Oct. 3 2021, [https://www.bloomberg.com/news/](https://www.bloomberg.com/news/articles/2021-10-03/softbank-is-cutting-more-deals-with-fewer-staff-than-ever-before)  
3 [articles/2021-10-03/softbank-is-cutting-more-deals-with-fewer-staff-than-ever-before](https://www.bloomberg.com/news/articles/2021-10-03/softbank-is-cutting-more-deals-with-fewer-staff-than-ever-before).

4 25. Again according to the SoftBank 2021 Annual Report, Vision Fund and Vision Fund  
5 II are managed by SBIA (UK), a wholly-owned subsidiary of SBG. *See* SoftBank 2021 Annual  
6 Report at 013. On the Vision Funds’ website, SBIA (UK), SBIA (US) and SB Investment Advisers  
7 (Japan) Corp. are described as the Vision Funds’ “advisory affiliates” and collectively referred to as  
8 “SoftBank Investment Advisers”. <https://visionfund.com/legal>.

9 26. SBIA (US) is also a wholly-owned subsidiary of SBG and “provides investment  
10 advices” to SBIA (UK). SoftBank 2021 Annual Report at 151.

11 27. According to filings made with the U.S. Securities and Exchange Commission, SBIA  
12 (US) is incorporated in Delaware and has its “Business address” in California—specifically, at 1  
13 Circle Star Way, 2F, San Carlos, California 94070. *See* [https://www.sec.gov/edgar/browse/?CIK=](https://www.sec.gov/edgar/browse/?CIK=1730859)  
14 [1730859](https://www.sec.gov/edgar/browse/?CIK=1730859), “Company Information” tab.

15 28. Working with SoftBank and other entities (but not the Petitioner or any of its  
16 affiliates), the Katerra Group engaged in a comprehensive financial restructuring in late 2020 (the  
17 “Katerra Restructuring”), the ultimate goal of which was to eliminate all of the Katerra Group’s  
18 then-outstanding debt and to provide it with additional capital.

19 29. As part of the Katerra Restructuring, it was agreed that Greensill Ltd would  
20 extinguish all of the Katerra Group’s debts and obligations in relation to the outstanding Notes, and  
21 that Greensill Ltd would purport to cancel and render void the Katerra RPA and release the security  
22 Katerra Delaware had provided to Greensill in connection therewith—despite the fact that Greensill  
23 Ltd had already granted the participation rights described above and security to Greensill UK, which  
24 in turn had assigned those rights to Hoffman.

25 30. It appears that Katerra and SoftBank discussed this purported cancellation of the  
26 Katerra RPA as early as September 2020. *See* Niemann Decl. ¶ 23 (in September 2020, Katerra,  
27 SoftBank and “a consortium of new investors and existing stakeholders . . . executed a non-binding  
28 letter of intent” reflecting, among other things, “the retirement of Katerra’s outstanding Greensill

1 Receivables Facility”).

2       31.     The specific transaction contemplated in the September 2020 letter of intent “did not  
3 materialize” (*id.*), but, on December 1, 2020, Greensill Ltd and Katerra Delaware (and the other  
4 signatories to the Katerra RPA) entered into a letter agreement wherein Greensill Ltd purported to  
5 release various liens on assets Katerra Delaware and its affiliates had put up as collateral in  
6 connection with the Katerra RPA. This agreement is referred to herein as the “Security Release  
7 Agreement.”<sup>1</sup>

8       32.     Shortly thereafter, on December 30, 2020, Greensill Ltd, Katerra Delaware and  
9 Katerra Cayman entered into a “Contribution and Exchange Agreement” (the “CEA”) dated  
10 December 30, 2020, by which Greensill Ltd purported to cancel any amounts then owed to it under  
11 the Katerra RPA to Greensill Ltd, assigned to Katerra Cayman all rights to any receivables  
12 previously sold to Greensill Ltd (Katerra Cayman then assigning such rights on to Katerra  
13 Delaware), cancelled the Katerra RPA going forward, and released all of the security granted to it  
14 as security for the obligations under the Katerra RPA. In exchange, Greensill Ltd received  
15 approximately 5% of the recapitalized shares of Katerra Cayman (which were immediately  
16 transferred to a Vision Funds entity, as discussed further below).

17       33.     No SoftBank entity was a formal party to the CEA, but there is evidence that from at  
18 least about December 4, 2020, SoftBank was coordinating directly with Greensill the final details  
19 of the “termination” of Greensill Ltd’s arrangements with the Katerra Group in connection with the  
20 Katerra Restructuring. The CEA was discussed and ultimately approved at one or more meetings  
21 of Katerra Cayman’s Board of Directors—one of whom was Jeffrey Housenbold. Mr. Housenbold’s  
22 LinkedIn page indicates that, during the relevant time period, Mr. Housenbold was a “Founding  
23 Managing Partner” at “SoftBank Investment Advisers” in “Silicon Valley.”  
24 <https://www.linkedin.com/in/jeffreyhousenbold1/>. Because there does not appear to be an SBIA  
25

26 \_\_\_\_\_  
27 <sup>1</sup> For purposes of brevity, I have not attached hereto the Security Release Agreement or the other  
28 specific agreements forming the basis of the Petitioner’s anticipated Section 423 claim, but such  
agreements are in the possession of the Petitioner and have been reviewed in detail in connection  
with preparing the Section 423 claim.



1 office in “Silicon Valley” other than SBIA (US)’s San Carlos, California offices, it appears that Mr.  
2 Housenbold operated out of those offices.

3 34. According to press reports and his LinkedIn page, Mr. Housenbold is currently a  
4 “Senior Advisor” to Vision Funds head Rajeev Misra and SBG CEO Masayoshi Son. *See* Ari Levy,  
5 *SoftBank Vision Fund Is Losing Jeff Housenbold, Who Led Investments in DoorDash, OpenDoor*  
6 *and Wag*, CNBC, Jan. 15, 2021, [https://www.cnbc.com/2021/01/15/softbank-vision-fund-losing-](https://www.cnbc.com/2021/01/15/softbank-vision-fund-losing-jeff-housenbold-who-led-doordash-deal.html)  
7 [jeff-housenbold-who-led-doordash-deal.html](https://www.cnbc.com/2021/01/15/softbank-vision-fund-losing-jeff-housenbold-who-led-doordash-deal.html); <https://www.linkedin.com/in/jeffreyhousenbold1/>.

8 35. Redacted documents filed in later Katerra bankruptcy proceedings indicate that two  
9 other individuals associated with SoftBank—at least one of whom appears to have been employed  
10 by or operating on behalf of SBIA (US)—also attended at least two of the meetings of Katerra  
11 Cayman’s Board of Directors where the CEA and/or Greensill’s role in the Katerra Restructuring  
12 was discussed. *See* DIP Lender’s Witness and Exhibit List for Hearing on July 19, 2021, Katerra  
13 Bankruptcy, Dkt. No. 610 at Ex. 4, p. 3 (redacted Katerra Cayman Board minutes identifying Hatim  
14 Suklha and Carpus Tin as “others present” representing “SoftBank” at a November 12, 2020 Katerra  
15 Cayman Board meeting); *id.* at Ex. 5, p. 2 (redacted Katerra Cayman Board minutes identifying  
16 Hatim Suklha and Carpus Tin as “others present” representing “SoftBank” at a December 23, 2020  
17 Katerra Cayman Board meeting); <https://www.linkedin.com/in/carpusktin/> (Mr. Tin’s LinkedIn  
18 page indicates that he was an “Investment Associate” at “SoftBank Investment Advisers” in the  
19 “San Francisco, California” area at the time of these meetings).

20 36. Also on December 30, 2020, Greensill Ltd entered into an agreement with SVF II  
21 Abode—a Vision Funds entity incorporated in the Cayman Islands—by which Greensill Ltd  
22 transferred to SVF II Abode the 5% equity in Katerra Cayman that Greensill Ltd had acquired  
23 through the CEA (the “Share Disposal Agreement”). The Share Disposal Agreement references  
24 “good and valuable consideration” paid to Greensill Ltd in return for its transfer of Katerra Cayman  
25 equity to SVF II Abode, but none is specified in the Share Disposal Agreement, and the Petitioner  
26 is not aware of any.

27 37. Brian Wheeler signed the Share Disposal Agreement on behalf of SVF II Abode. Mr.  
28 Wheeler’s LinkedIn page indicates that, during the relevant time period, Mr. Wheeler was a

1 “Managing Partner & General Counsel” at “SoftBank Investment Advisers” in the “San Francisco  
2 Bay Area.” <https://www.linkedin.com/in/bcwheeler1/>. Because there does not appear to be an SBIA  
3 office in the “San Francisco Bay Area” other than SBIA (US)’s San Carlos, California offices, it  
4 appears that Mr. Wheeler operated out of those offices. *See also* Kiyoshi Ota, *SoftBank’s Top*  
5 *Lawyer Steps Down Amid Investment-Side Departures*, Bloomberg Law, Nov. 9, 2020,  
6 [https://news.bloomberglaw.com/business-and-practice/softbanks-top-lawyer-steps-down-amid-](https://news.bloomberglaw.com/business-and-practice/softbanks-top-lawyer-steps-down-amid-investment-side-departures)  
7 [investment-side-departures](https://news.bloomberglaw.com/business-and-practice/softbanks-top-lawyer-steps-down-amid-investment-side-departures) (press report referring to Mr. Wheeler as “managing partner and general  
8 counsel for SoftBank Investment Advisers, a San Carlos, Calif.-based entity that oversees  
9 [SoftBank’s] Vision Fund”).

10 38. To my knowledge, no one informed the Petitioner or any of its affiliates about this  
11 series of agreements until after they had already been executed.

12 39. According to public sources, at the close of the Kattera Restructuring, substantially  
13 all of Kattera Cayman’s equity was held by three Vision Funds entities: SVF Abode, SVF II Abode,  
14 and SVF Habitat (collectively, the “SVF Funds”). *See, e.g.*, Niemann Decl. ¶ 27.

15 40. Greensill UK and another Greensill entity, Greensill Capital Management Company  
16 (UK) Ltd—but not at that time Greensill Ltd—were put into administration in the United Kingdom  
17 on March 8, 2021. The Australian parent company of Greensill, Greensill Capital Pty Ltd, was also  
18 insolvent. It entered administration in Australia on March 9, 2021 and went into liquidation on  
19 April 22, 2021.

20 41. Also in or about March 2021, the Notes that had been scheduled to mature in that  
21 month defaulted. The remaining Notes defaulted in or about May 2021. As such, to date, the  
22 Petitioner has not been paid any portion of the approximately \$440 million it invested into the Notes.

23 42. In early June 2021, despite the Kattera Restructuring, the Kattera Group initiated  
24 Chapter 11 bankruptcy proceedings in the United States Bankruptcy Court for the Southern District  
25 of Texas in the form of the Kattera Bankruptcy.

26 43. In the petition it filed to initiate its bankruptcy proceeding (under case number 21-  
27 31862), Kattera Cayman’s “List of Equity Security Holders” identifies only the three SVF Funds.  
28 The address for each of the SVF Funds listed in the bankruptcy petition is 1 Circle Star Way, San

1 Carlos, California 94070, United States. *See* Voluntary Petition for Non-Individuals Filing for  
2 Bankruptcy, *In re Kattera Inc.*, Case No. 21-31862 (Bankr. E.D. Tex.), Dkt. No. 1 at 6.

3 44. In a hearing that occurred on July 19, 2021 in the Kattera Bankruptcy, one of Kattera  
4 Cayman’s independent directors, Pamela Corrie, provided testimony concerning an investigation  
5 she and Kattera Cayman’s other independent director, Harvey Tepner, directed to investigate  
6 whether the Kattera Group possessed any cognizable claims against SoftBank such that SoftBank’s  
7 request for a release in exchange for financing during the pendency of the Kattera Bankruptcy would  
8 be improper (the “Kattera SoftBank Investigation”). Attached hereto as **Exhibit 1** is a true and  
9 correct copy of excerpts of the transcript of that hearing. *See* **Exhibit 1** hereto at 127:15-25.

10 45. One focus of the Kattera SoftBank Investigation was an effort to determine “what  
11 happened with Greensill, and how had SoftBank paid off Greensill or what deal they had made”  
12 such that, via the CEA, Greensill was willing to terminate the RPA and return the rights to all  
13 outstanding receivables to Kattera. *Id.* at 133:20-134:8.

14 46. According to Ms. Corrie, as part of the Kattera SoftBank Investigation, “SoftBank”  
15 produced “over 2,000 documents” to counsel for Kattera Cayman’s independent directors. *Id.* at  
16 129:18-21.<sup>2</sup>

17 47. During the course of the Kattera SoftBank Investigation, counsel for Kattera  
18 Cayman’s independent directors interviewed Mr. Housenbold as well as Madhav Dhar, Mr.  
19 Housenbold’s replacement as the SoftBank representative on Kattera Cayman’s Board of Directors.  
20 *See id.* at 131:7-9.<sup>3</sup>

21 48. Also interviewed were “two additional [SoftBank-affiliated] individuals, Tom  
22 Cheung and Saleh Romeih . . . both of whose names became apparent as having a substantial nexus  
23 to Kattera and the decisions made with respect to Greensill as a result of the document production  
24

25 <sup>2</sup> In her testimony, Ms. Corrie did not specify which specific SoftBank entity or entities produced  
26 the documents.

27 <sup>3</sup> The transcript excerpts attached hereto as Ex. 1 refer to Mr. Dhar as “Mahd Abdar,” but this  
28 appears to be a transcription error. Other filings in the Kattera Bankruptcy identify Mr. Dhar as Mr.  
Housenbold’s replacement on the Kattera Cayman Board of Directors. According to Ms. Corrie,  
Mr. Housenbold was replaced by Mr. Dhar in “March of 2021.” **Exhibit 1** at 152:20-21.

1 that was done by SoftBank.” *Id.* at 131:9-14.

2 49. The Vision Funds website refers to Mr. Cheung as “Partner, Americas.”  
3 <https://visionfund.com/in/team/tommy-cheung>. Mr. Cheung’s LinkedIn page refers to Mr. Cheung  
4 as a “Partner” at “SoftBank Investment Advisers” in the “San Francisco Bay Area.”  
5 <https://www.linkedin.com/in/tom-cheung-947110/>. Because there does not appear to be an SBIA  
6 office in the “San Francisco Bay Area” other than SBIA (US)’s San Carlos, California offices, it  
7 appears that Mr. Cheung works out of those offices.

8 50. During the same hearing, Ms. Corrie testified that, after Greensill became insolvent,  
9 the Kattera Group’s executives reached out to SoftBank—including Mr. Housenbold—to “ask for  
10 help” in “confirm[ing] that [the] \$440 million [outstanding under Kattera RPA] had been paid off[.]”  
11 **Exhibit 1** at 152:9-19. According to Ms. Corrie, however, SoftBank was “not particularly  
12 responsive to the requests of -- of Kattera for clarification.” *Id.* at 153:1-2.

13 51. As such, Kattera Group “management continued to ask SoftBank for a number of  
14 things,” including “information underlying the Greensill-SoftBank transaction[.]” *Id.* at 155:1-8.  
15 According to Ms. Corrie, SoftBank “said that this would have to go to the highest levels at SoftBank,  
16 up to Masa Son who makes the final decisions at SoftBank, and there was a -- a time set ... at Kattera  
17 to speak to Masa Son that ... ultimately took place [in] ... late May of 2020.” *Id.* at 155:10-17.<sup>4</sup>

18 52. On July 30, 2021, Greensill Ltd was placed into liquidation and partners in Grant  
19 Thornton were appointed as joint liquidators.

20 53. On October 21, 2021, the court in the Kattera Bankruptcy confirmed the Kattera  
21 Group’s amended Chapter 11 bankruptcy plan (the “Kattera Bankruptcy Plan”). *See* Order (I)  
22 Approving the Disclosure Statement and (II) Confirming the Amended Joint Chapter 11 Plan of  
23 Kattera Inc. and Its Debtor Subsidiaries, Kattera Bankruptcy, Dkt. No. 1372.

24 54. The Kattera Bankruptcy Plan became effective on October 29, 2021. *See* Notice of  
25 Occurrence of the Effective Date of the Amended Joint Chapter 11 Plan of Kattera Inc. and Its  
26 Debtor Subsidiaries, Kattera Bankruptcy, Dkt. No. 1422.

27  
28 <sup>4</sup> Given the context, Ms. Corrie clearly misspoke when she described the year of this meeting as  
2020 instead of 2021.

1 **Steps Taken to Date**

2 55. On October 7, 2021 my firm wrote a 31-page letter to Mr. Timothy Mackey, whom  
3 I believe to be the group compliance officer for SoftBank. Attached hereto as **Exhibit 2** is a true and  
4 correct copy of that letter (the “October Letter”).

5 56. The specific SoftBank entities to whom the October Letter was addressed are set out  
6 at Schedule 1 to that Letter. *See* **Exhibit 2** at 30.

7 57. The October Letter makes various points in relation to SoftBank’s involvement in  
8 the Katterra Restructuring as follows:

9 a. in the Executive Summary, it references the knowledge and involvement of  
10 Mr. Masayoshi Son (*see id.* ¶¶ 6-10);

11 b. the relevant background facts are set out in some detail (*see id.* ¶¶ 14-93);

12 c. various potential claims against SoftBank Entities are set out (including a  
13 reference to the Section 423 Claim) (*see id.* ¶ 95); and

14 d. a number of explanations together with copies of various documents are  
15 requested (*see id.* ¶¶ 97-98).

16 58. In particular, the October Letter seeks an explanation of:

17 “The material discrepancy between: (i) the account which Mr Masayoshi Son and  
18 senior SoftBank staff gave of their knowledge and involvement in the Katterra  
19 programme and subsequent extinguishment of the RPA to Thomas Gottstein and  
20 other senior Credit Suisse representatives in a meeting held in September 2021; and  
21 (ii) contemporaneous evidence. In the September meeting, Mr Masayoshi Son denied  
22 all knowledge of the Katterra programme. However, this account is inconsistent with  
23 Lex Greensill’s email with the subject line ‘*Katterra – Variation*’ of 19 December  
24 2019’ to certain Greensill staff regarding SoftBank’s approval of a guarantee which  
25 formed part of the underlying Katterra programme, which includes: “*Masa was*  
26 *personally sighted on the issue and gave me his personal commitment that the*  
*guarantee will be issued... (I have now done so and Masa was explicit about his*  
*support.)*” Further, we also understand, that on 10 October 2020, when the  
restructuring and refinancing of Katterra was being developed, Lex Greensill  
discussed these issues with Mr Son and gave a presentation to him. In light of these  
facts, Mr Son’s stance in his meeting with Mr Gottstein is surprising and requires  
explanation. On the fact of it, it is clear that the Katterra programme had support and  
involvement from the most senior levels of management at the SoftBank Entities.”

27 *See id.* ¶ 97.1.

28 59. On October 18, 2021, the law firm of Morrison & Foerster (UK) LLP (“MF”) wrote

1 an initial letter to my firm noting that they acted for SBG (but not any other members of the SoftBank  
2 group). A true and correct copy of that letter is attached hereto as Exhibit 3.

3 60. On November 3, 2021, my firm wrote a letter to MF requesting a full response to the  
4 October Letter. A true and correct copy of that letter is attached hereto as Exhibit 4. The following  
5 day, MF wrote a slightly more substantive response to the October Letter. A true and correct copy  
6 of that letter is attached hereto as Exhibit 5.

7 61. There followed a further exchange of correspondence:

8 a. on November 12, 2021, my firm wrote again to MF requesting a further  
9 explanation and documentation (including an explanation in relation to Mr. Son's role); and

10 b. on November 26, 2021 MF replied and once again declined to provide any  
11 information or documentation (including failing to provide documentation which MF had referred  
12 to in the correspondence with my firm). True and correct copies of these letters are attached hereto  
13 as Exhibits 6 & 7, respectively.

14 62. There has been no further correspondence with MF since November 26, 2021.

15 63. On November 1, 2021, my firm received a letter from the law firm of Quinn Emanuel  
16 Urquhart & Sullivan UK LLP ("QE") which confirmed that they acted for all of the SoftBank  
17 entities listed at paragraph 5, above, apart from SBG. A true and correct copy of that letter is attached  
18 hereto as Exhibit 8. Since then, there has been an exchange of correspondence as follows:

19 a. my firm responded to QE's November 1, 2021 Letter on November 12,  
20 2021; and

21 b. QE replied on November 30, 2021. True and correct copies of these letters  
22 are attached hereto as Exhibits 9 & 10, respectively.

23 64. There has been no further correspondence with QE since November 30, 2021.

#### 24 **The English Lawsuit**

25 65. As matters currently stand, the Petitioner is planning to issue the Section 423 Claim  
26 against the following parties, referred to herein as the "Softbank Defendants":

27 a. Vision Fund;

28 b. Vision Fund II;

- c. SVF Abode;
- d. SVF II Abode;
- e. SVF Habitat; and
- f. SBG.

66. As to each of the SoftBank Defendants, the Petitioner plans to allege the following facts, all of which I am informed and believe are true:

a. SoftBank is a multinational conglomerate group based in Japan but active in the United States and elsewhere. It raises investments in the funds which it manages, and deploys those investments to invest in new and disruptive technologies. SoftBank invests in particular through Vision Fund, which was launched in 2017, and Vision Fund II, which was launched in 2019. As discussed above, the Vision Funds are Jersey limited partnerships. In the last four years, Vision Fund has made 92 investments and Vision Fund II has made 44 since 2019.

b. SVF Abode and SVF Habitat are companies incorporated in the Cayman Islands. It is reasonable to infer from their names and their roles as shareholders in Katterra Cayman following the Katterra Restructuring that they are companies through which the Vision Funds make investments;

c. SVF II Abode is also a company incorporated in the Cayman Islands. It is reasonable to infer, from its name and from its participation in the Share Disposal Agreement that it is a company through which the Vision Funds make investments.

d. SBG is the parent company of SoftBank group. SBG is a company headquartered and incorporated in Japan. SBG is a limited partner of, and contributes to the equity of, Vision Fund and it is the sole limited partner investing in Vision Fund II.

67. A true and correct copy of Sections 423 to 425 of the Insolvency Act 1986 is attached hereto as **Exhibit 11**.

68. The Petitioner's case in the Section 423 Claim is based on the following propositions:

a. that the transactions in December 2020 to which Greensill Ltd was party (namely, the Security Release Agreement, the CEA and the Share Disposal Agreement, together the "Improper Transactions") were at an undervalue;

1           b.       that the intention of Greensill Ltd was to assist SoftBank by freeing the  
2 Katterra companies of all Greensill Ltd's rights, claims and security, and therefore to put those  
3 valuable assets (which were Greensill Ltd's only assets apart from possible residual claims) beyond  
4 the reach of a person who might make a claim against Greensill Ltd's rights, claims and/or security  
5 against the relevant Katterra counterparties;

6           c.       that the English court therefore has discretionary jurisdiction to make a  
7 remedial order under Section 423 of the Insolvency Act 1986;

8           d.       that the SoftBank Defendants received benefits from the transactions (either  
9 directly through receiving the shares given up by Greensill Ltd, or indirectly because of the  
10 prospective benefit for their shareholding (or their economic interest in the shareholding) in Katterra  
11 Cayman);

12           e.       that the SCF Subfund is a "victim" of the transactions with standing to make  
13 an application (strictly, on behalf of all "victims," although it at present appears that the SCF  
14 Subfund would be the only such "victim"); and

15           f.       that the Court can make an appropriate order to restore the position that would  
16 have prevailed had the Improper Transactions not occurred and/or or protect the Petitioner's  
17 interests (including, potentially, an order that the SoftBank Defendants pay a sum of money to  
18 reverse the benefits they received as a result of the Improper Transactions).

19       69.       The preparation of the English Lawsuit is well advanced. My firm has retained two  
20 Queen's Counsel to advise the Petitioner: Glen Davis (a restructuring/bankruptcy specialist) and  
21 Sonia Tolaney (a commercial litigator and trial lawyer). They (and a team of junior barristers) are  
22 currently working with my firm to finalize the Section 423 Claim and the aim is to be ready to file  
23 that Claim in the coming weeks.

24       70.       It is considered that it will be necessary as a formality to join Greensill Ltd to the  
25 Section 423 Claim. This would be simply to ensure that Greensill Ltd is bound by any order the  
26 court made, and no substantive relief would be sought from Greensill Ltd.

27       71.       Since Greensill Ltd is in liquidation, the leave of the English court is required to  
28 commence a claim under Section 423 (see section 424(1)(a) of the Insolvency Act 1986).



1           72.     Since Greensill Ltd is a U.K.-based entity, there is no issue with respect to service  
2 on that entity. Given that the other SoftBank Defendants are entities based outside the United  
3 Kingdom, leave of the court will be required to effect service on them.

4           73.     In addition to the Section 423 Claim, the Petitioner considers that it may have other  
5 potential claims against SoftBank. These claims are set out in some detail in the October Letter and  
6 the Petitioner is continuing to investigate those claims.

7           74.     The Petitioner is seeking from various sources further information it needs in order  
8 to be able to finalize those claims.

9           75.     It may be that the Requested Documents (as defined below) are relevant to these  
10 additional claims.

11 **Discovery sought**

12           76.     In this proceeding, the Petitioner seeks disclosure of documents from SBIA (US).<sup>5</sup>

13           77.     The Petitioner seeks eight limited categories of documents for use in the English  
14 Lawsuit (collectively, the “Requested Documents”). The time period for which the Requested  
15 Documents are sought is limited to the period between September 1, 2020 and May 31, 2021 (the  
16 “Requested Time Period”).

17           78.     Each of the eight categories relates directly to the Section 423 claim the Petitioner  
18 plans to assert in that Lawsuit. In particular, several of the categories of Requested Documents will  
19 be relevant to the state of mind and knowledge of the SoftBank Defendants in relation to the  
20 Improper Transactions, as well as the degree of their involvement in arranging the Improper  
21 Transactions. This will be relevant to the English court’s consideration of the form of relief it grants  
22 pursuant to the Section 423 Claim, under which it has wide discretionary powers (as set out in *4 Eng*  
23 *Ltd v Harper* [2009] EWHC 2633 (Ch): see in particular [13]-[14]).

24           79.     **First category:** the Petitioner seeks board minutes or other documents related to the  
25 Kattera Restructuring that were discussed by or presented to Kattera Cayman’s Board of Directors  
26

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27 <sup>5</sup> I have submitted a similar declaration in support of the Petitioner’s application for discovery from  
28 Kattera Cayman, which I understand has been filed or will shortly be filed in the United States  
District Court for the District of Arizona, also in connection with the English Lawsuit.

1 in the Requested Time Period. As set out above, Jeffrey Housenbold of (the Petitioner believes)  
2 SBIA (US) was on Katerra Cayman’s board at the relevant time. These documents will be relevant  
3 to the English Lawsuit because they may pertain to the degree of knowledge held and state of mind  
4 of the SoftBank Defendants at the relevant points in time.

5       80.     **Second category:** the Petitioner seeks documents from the Requested Time Period  
6 consisting of or reflecting communications regarding one or more of the Improper Transactions.  
7 Such documents will be relevant to show the SoftBank Defendants’ knowledge of, and involvement  
8 in procuring, the Improper Transactions.

9       81.     **Third category:** the Petitioner seeks documents from the Requested Time Period  
10 consisting of or reflecting communications concerning whether or how the Katerra Restructuring  
11 would, could, or did affect the Petitioner, any investors in the Petitioner, or the Petitioner’s various  
12 Credit Suisse affiliates. Such documents will be relevant to show the SoftBank Defendants’  
13 knowledge that the Improper Transactions would be detrimental to the Petitioner.

14       82.     **Fourth, fifth, and sixth categories:** the Petitioner seeks documents from the  
15 Requested Time Period regarding the consideration underlying each of the three Improper  
16 Transactions. Such information is critical to the Petitioner’s claim in the English Lawsuit because  
17 lack of proper consideration is fundamental to the Section 423 Claim.

18       83.     **Seventh and eighth categories:** the Petitioner seeks: (i) documents from March 1,  
19 2021 to May 31, 2021 consisting of or reflecting communications concerning the requests discussed  
20 above during this time period wherein the Katerra Group asked SoftBank to confirm that the  
21 amounts under the Katerra RPA had been “paid off” and for other “information underlying the  
22 Greensill-SoftBank transaction” (**Exhibit 1** at 152:9-19, 155:1-8); (ii) and the “over 2,000  
23 documents” produced by one or more SoftBank entities to Katerra (*id.* at 129:18-21). As discussed  
24 above, those requests, and the subsequent Katerra SoftBank Investigation, directly related to  
25 SoftBank’s role in the Katerra Restructuring, in particular the details of whether and, if so, how  
26 SoftBank had “paid off” Greensill for its cancellation of the Katerra RPA via the CEA.

27       84.     The Requested Documents will likely not be obtainable in the English Lawsuit  
28 because, as discussed above, SBIA (US) is not currently anticipated to be named as a defendant to

1 the Section 423 Claim and as such it will not be obliged to provide any disclosure for that claim.

2 **Conclusion**

3 85. In my experience, English courts are familiar with the procedures set forth in the  
4 procedures set forth in 28 U.S.C. § 1782 and are receptive to the introduction or attempted  
5 introduction into evidence of documents obtained through that process.

6 86. The English Court will be receptive to evidence obtained through 1782 proceedings  
7 in the United States, as demonstrated by the English Court's judgment in *South Carolina Insurance*  
8 *Co v Assurantie Maatschappij 'De Zeven Provinciën' NV* [1987] 1 AC 24 (see pages 41-42), in  
9 which the House of Lords confirmed that the 1782 procedure could be used to obtain evidence for  
10 use in English civil proceedings. *See also Nokia Corporation v Interdigital Technology Corporation*  
11 [2004] EWHC 2920.

12 87. There is no law, rule of evidence, or rule of procedure in the English Courts which  
13 prohibits a party from seeking discovery pursuant to a Section 1782 application and then using any  
14 evidence obtained through a Section 1782 application in English Court proceedings.

15 88. In fact, under English law, to obtain disclosure of documents within the control of a  
16 non-party who is located outside of the jurisdiction of the English Court, it is necessary to seek the  
17 assistance of the courts in that jurisdiction. I therefore believe that the English Court will be  
18 receptive to the use of the discovery sought by the Petitioner in this Application.

19 89. While it is technically permissible, as set out in *South Carolina Insurance*, for an  
20 English Court to grant an injunction preventing a party from making or proceeding with a Section  
21 1782 application where the facts of that particular application in the context of the English litigation  
22 makes its pursuit unconscionable, I do not consider that the Petitioner's making of the Section 1782  
23 Application in this instance is unconscionable, for the reasons set out in this declaration.

24 90. Should the 1782 Application be granted, I anticipate the requested discovery will be  
25 used in the English Lawsuit and will assist the English Court in fairly adjudicating these  
26 proceedings.

27 [SIGNATURE APPEARS ON FOLLOWING PAGE]  
28

1 I declare under penalty of perjury under the laws of the United States of America that the  
2 foregoing is true and correct to the best of my knowledge and belief and that I have executed same  
3 on this 23<sup>rd</sup> day of December, 2021 at 100 Bishopsgate, London. EC2

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7 NEIL ANTHONY GOLDING  
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